trespass. *Brookhaven v. Smith*, 98 App. Div. 212 N.Y. It has been held that proprietors of lands upon navigable waters are entitled to erect wharves and piers for their own and the public use in order to gain access to the navigable parts of the waters. *Steamboat Co. v. Visger*, 179 N. Y. 206. But there the land in question belonged to the state wherein the present case is distinguishable.

NUISANCE—PRESCRIPTION.—OVER v. DEHUE, 75 N. E. 664 (IND.).—In a suit to restrain defendant from operating his foundry, interfering with the enjoyment by plaintiff of his premises, the evidence showed that defendant had operated his foundry for twenty years and that plaintiff had occupied his property for over twenty years. *Held*, not sufficient to give defendant a prescriptive right to operate the foundry in manner complained of.

It is a well established principle that no lapse of time can confer a right to maintain a public nuisance. *Cooley on Torts*, page 730 (2nd Edition); *Inhabitants of Charlotte v. Iron Works*, 8 L. R. A. 828. And regarding a private nnisance the mere fact that the business constituting the nuisance was in operation a few years before a party erected a dwelling is no defense to an action in the absence of a claim of prescriptive right. *Fertilizer Co. v. Malone*, 73 Md. 268; *Mulligan v. Elias*, 12 Abb. Prac. (N. S.) 259. Bringing suits for damages for such use shows sufficiently the want of acquiescence by plaintiff. *Bunten v. Railway Co.*, 50 Mo. App. 414. Although defendant in present case operated his foundry for prescriptive period with knowledge of plaintiff and no complaint from latter, yet the peculiar manner of operating the foundry which caused the nuisance had not been in existence for the entire period. Therefore, the defendant had no right to maintain it, and decision was according to the weight of authority. *Campbell v. Seaman*, 63 N. Y. 568.

OFFICERS—TERM OF OFFICE—TERMINATION.—PROWELL v. STATE EX REL. HASTY ET AL.—39 So. 164 (ALA.).—*Held*, that the words, "until his successor is elected and qualified," as used in the Constitution and statutes relative to the terms of officers, are not intended to prolong the terms of office beyond such reasonable time after the election as will enable the newly elected officer to qualify, and after the expiration of such reasonable time, if the newly elected officer fails to qualify, the office becomes vacant.

At common law there was no rule which gave an individual elected or appointed to office the right to continue in office after the expiration of the term limited by law and until a successor was chosen and qualified. *People v. Tieman*, 30 Barb. 193. Nevertheless, an officer had the right to continue to occupy the office as a mere *locum tenens* and perform the duties incident to the office. *In matter of Woodworth*, 37 Cal. 614. Where a statute speaks of a "vacancy" in an office the word has no technical meaning. *People v. Osborne*, 7 Colo. 605. An office is not vacant when there is a *de facto* incumbent. *Harrison v. Simonds*, 44 Conn. 318. The length of time which will be allowed the officer to quailfy depends upon the statutes creating the office. *People v. Perkins*, 26 Pac. 245. Apparently the principal case is one of first impression, there being no decision on facts that are precisely similar.

PLEADING—PARTIES—MISNOMER—MODE OF OBJECTION.—MCINTOSH COUNTY COM'RS v. AIKEN, 51 S. E. (GA.) 585.—*Held*, that where, in a civil case, the party proceeded against is designated and described by a wrong name, the objection of misnomer should be taken by a plea in abatement, and not by a motion to dismiss.

At one time a doubt existed as to whether a mistake of the plaintiff's Christian or surname were not a ground of non-suit. 1 *Chitty's Pleading*, 440. In general, however, a misnomer of defendant is only pleadable in abatement, and cannot be taken advantage of in arrest of judgment. *State v. Knowlton*, 70 Me. 200. A misnomer is waived by a failure to plead it or by a default. *Bank v. Jaggers*, 31 Ind. 38. Even the want of a charter, or one with great irregularities, must be pleaded in bar. *Rheem v. Wheel Co.*, 9 Casey, 348. But here, in a suit in *assumpsit* against two, one is arrested and the other returned "not found," and it appears on the trial that defendant who is not brought in is misnamed in the declaration, being called "John" instead of "George," plaintiff will fail on the ground of variance. *Waterbury v. Mather*, 16 Wend. 611. In the case of *Jackson Tp. v. Barnes*, 55 Ind. 136, where a suit was brought against another and different corporation for a debt for which it was not liable a demurrer was sustained. Such cases are, however, exceptional. In some states pleas in abatement have been abolished. *Phillips v. State*, 35 Ark. 384. In New York a misnomer should be set up *quasi* in abatement. *White v. Miller*, 7 Hun (N. Y.) 433.

PROMISSORY NOTE—CERTAINTY—EXCHANGE AND COLLECTION CHARGES.—SMITH V. FIRST STATE BANK OF TYLER, 104 N. W. (MINN.) 369.—*Held*, An instrument in the general form of a promissory note, whereby the maker promises to pay a definite sum, with exchange and collection charges is not a promissory note.

The rule stated above is in direct conflict with the provisions of the negotiable instruments act, sec. 2, 4, 5. Previous to the enactment of this statute, the courts in the various states had been nearly evenly divided on the question of the negotiability of instruments with such stipulations. In respect to exchange, the weight of authority being perhaps against negotiability. *Winsor Sav. Bank v. McMahar*, 38 Fed. 283; *Culbertson v. Nelson*, 93 Iowa 187. And as regards collection charges probably leaning towards the rule as adopted in the act. *Porsey v. Wolff*, 142 Ill. 589; *Appenheimer v. Farmers & Merchants Bank*, 97 Tenn. 19; *National Bank v. Sutton Mfg. Co.* 6 U. S. App. 312. In some states, although such provision is declared void by statute, the negotiability of the instrument is not affected. *Levens v. Briggs*, 21 Ore. 333.

TORTS—IMPUTED NEGLIGENCE—INJURY TO CHILD.—JACKSONVILLE ELECTRIC CO. V. ADAMS, 39 So. 183 (FLA.).—*Held*, that the contributory negligence of parents in permitting a child of four to go, unattended, upon the streets of a city upon which electric cars are operated cannot be imputed to the child in an action by him against the corporation for damages resulting from its negligence.

There is no conflict in individual states, some following the ruling of the case in hand, and others adopting the New York rule which hold that such negligence in parents will prevent child from recovering. Until recently, however, Kansas, Maryland and Wisconsin were not committed to either doctrine. *Chicago v. Wilcox*, 21 L. R. A. 76 Note. Maryland has now adopted the New York rule in *Cumberland v. Lating*, 95 Md. 42. Wisconsin has approved it in *Johnson Adm'r. v. Chicago & Northeastern R. R. Co.*, 49 Wis. 529, and the Kansas court seems to assume that parents' negligence would be a valid defense to action by child. *Smith v. Santa Fe R. R.*, 25 Kan. 739. Indiana, Maine, Massachusetts, and Minnesota also follow New York. The